

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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In the Matter of J.D.B., Minor.

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FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

SHAWN BEISWINGER,

Respondent-Appellant,

and

CHRISTINA BEISWINGER,

Respondent.

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In the Matter of J.D.B., Minor.

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FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

CHRISTINA BEISWINGER,

Respondent-Appellant.

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UNPUBLISHED

January 14, 2003

No. 241447

Marquette Circuit Court

Family Division

LC No. 99-006696-NA

No. 241448

Marquette Circuit Court

Family Division

LC No. 99-006696-NA

Before: Meter, P.J., and Neff and Donofrio, JJ.

PER CURIAM.

Respondents appeal as of right from the trial court's order terminating their parental rights to the minor child pursuant to MCL 712A.19b(3)(b)(i), (b)(ii), (k), and (l). The court had

previously terminated respondents' parental rights to the child's older brother because he suffered physical abuse, including repeated bruising, a fractured femur and a broken rib, while in respondents' care. We affirm.

Respondents first contend that MCL 712A.19b(3)(l), authorizing termination of parental rights when "[t]he parent's rights to another child were terminated," is unconstitutional because it impermissibly infringes on their fundamental liberty interest in their relationships with each of their children. Respondents failed to raise any objection to the court's consideration of MCL 712A.19b(3)(l) as a basis for terminating their parental rights. Thus, this issue is not preserved. "This Court ordinarily will not consider unpreserved issues raised for the first time on appeal." *In re RFF*, 242 Mich App 188, 204; 617 NW2d 745 (2000). However, this Court may nonetheless address an unpreserved claim that involves a significant constitutional issue for which all necessary facts are before it, provided the alleged constitutional error qualifies as outcome determinative. *Heltzel v Heltzel*, 248 Mich App 1, 15; 638 NW2d 123 (2001); *In re Hildebrant*, 216 Mich App 384, 389; 548 NW2d 715 (1996).

We decline to address respondents' unpreserved constitutional issue because it does not affect the outcome of this case. The trial court plainly premised its termination of respondents' parental rights to the child on several statutory grounds, including MCL 712A.19b(3)(b)(i), (b)(ii), and (k). Respondents do not challenge the existence of any of these statutory grounds on appeal, and, after reviewing the record, we agree that they were clearly and convincingly established. While in respondents' care for the first six months of his life, the minor child's older brother experienced repeated bruising, a femur fracture that likely signaled child abuse, and a broken rib that was characterized as absolutely indicating child abuse. Respondents failed to adequately explain all the injuries, and, during the year the court permitted respondents to participate in treatment, they consistently refused to acknowledge any culpability for the older brother's injuries. Because only one statutory ground for termination need be established, MCL 712A.19b(3), and in this case several grounds existed apart from MCL 712A.19b(3)(l), we need not address respondents' unpreserved constitutional claim.

Respondents next argue that the court rule prohibiting a jury trial with respect to the dispositional (i.e., termination) phase of child protective proceedings violates the juvenile code and their due process rights. The record reflects, however, that respondents affirmatively expressed their agreement to forego any type of hearing to address the alleged statutory bases for termination of their parental rights, and agreed that the trial court could render its decision on the basis of the existing record and the parties' written arguments. Accordingly, respondents have affirmatively waived this Court's consideration of their claim. *Chapdelaine v Sochocki*, 247 Mich App 167, 177; 635 NW2d 339 (2001); *Farm Credit Serv's of Michigan's Heartland, PCA v Weldon*, 232 Mich App 662, 683-684; 591 NW2d 438 (1998).

Respondents lastly assert that, in terminating their parental rights, the trial court should not have considered evidence introduced during the adjudication jury trial concerning scratches on the face of the child's half-brother, because none of the petitions filed with respect to the child or his older brother mentioned the half-brother's scratches. Because respondents waived any objection to this evidence when they stipulated that the court could decide the petition on the basis of the existing record, we will not address this question. *People v Carter*, 462 Mich 206, 215-216; 612 NW2d 144 (2000); *Farm Credit Serv's, supra*, 232 Mich App 683-684. We note,

however, that the trial court made no mention of the allegedly improper evidence in its opinion terminating respondents' parental rights to the child.

Affirmed.

/s/ Patrick M. Meter

/s/ Janet T. Neff

/s/ Pat M. Donofrio